

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
SEVENTH REGION**

**DETROIT EDISON COMPANY**

**Employer**

**and**

**Case 7-RC-22919**

**LOCAL 8, INTERNATIONAL BROTHERHOOD  
OF ELECTRICAL WORKERS, AFL-CIO**

**Petitioner**

**and**

**LOCAL 223, UTILITY WORKERS UNION OF  
AMERICA (UWUA), AFL-CIO**

**Intervenor/Cross-Petitioner**

**APPEARANCES:**

Adam Forman, Attorney, of Detroit, Michigan, for the Employer

Basil William Mangano, Attorney, of Toledo, Ohio, for the Petitioner

L. Rodger Webb, Attorney, of Detroit, Michigan for the Intervenor/Cross-Petitioner

**SUPPLEMENTAL DECISION AND DIRECTION OF ELECTION**

On April 17, 2006, I issued a Decision and Remand in this matter. In the decision, I concluded that the nuclear supervising operators (NSOs)<sup>1</sup> that the Petitioner sought to represent in a stand-alone unit were not statutory supervisors as contended by the Employer. However, I also found that there was insufficient evidence in the record to determine if the NSOs were an appropriate separate unit, or if they shared a community of interest with the employees at the Employer's Fermi 2 site currently represented by the Intervenor/Cross-Petitioner, or shared a community of interest with other unrepresented employees at Fermi 2. Accordingly, I ordered the case to be remanded for a hearing to

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<sup>1</sup> At the hearing and in the Decision and Remand, this classification was mistakenly referred to as nuclear supervisory operators.

obtain testimony on those issues. Because the decision and remand was not a final decision, I did not provide the parties with an opportunity to file a request for review.

Pursuant to the remand, on May 1, I issued an Order Setting Hearing Date, which set a hearing for May 22. Thereafter, on May 16, the Employer filed with the Board a Request for Expedited Consideration for Special Permission to Appeal the Decision of the Regional Director and Request to Stay Proceedings. On the day of the scheduled hearing, prior to a ruling by the Board on the Employer's requests, the parties entered into a Stipulated Record Pursuant to Regional Director's Decision and Remand.

The stipulation, which has been made a part of the record, sets forth a number of agreements. First, the Petitioner withdraws from further participation in this case and will not appear on the ballot for any election that is held. Second, the parties stipulated to the Intervenor's cross-petitioner status. In that regard, I have made an administrative determination that the Intervenor does have a sufficient showing of interest for cross-petitioner status. Thus, further processing of the petition is permitted. Third, the Employer withdraws its requests previously filed with, and pending before, the Board. Fourth, the Employer does not waive its position that NSOs are supervisors as defined in the Act, and the Intervenor/Cross-Petitioner does not waive its position that the NSOs are not an appropriate stand-alone unit. Fifth, the parties stipulated that, if my finding that the NSOs are statutory employees is upheld on review, the NSOs are an appropriate voting group, an *Armour Globe*<sup>2</sup> self-determination election for that group will be held, and, if a majority of the valid votes in that election is cast for the Intervenor/Cross-Petitioner, the NSOs will be included in the existing Fermi II Power Plant unit currently represented by the Intervenor/Cross-Petitioner. Finally, the parties stipulated that I would issue a decision and direction of election consistent with the findings in the Decision and Remand and with the parties' stipulation, and that the parties would thereafter have an opportunity to request review by the Board.

### **Conclusion**

Based upon the record, my prior Decision and Remand, and the stipulation entered into by the parties and referred to above, I make the following findings: First, none of the NSOs are supervisors within the meaning of Section 2(11) of the Act. Second, a self-determination election in which only the Intervenor/Cross-Petitioner will participate is appropriate for the following voting group:

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<sup>2</sup> *Globe Machine & Stamping Co.*, 3 NLRB 294 (1937); *Armour & Co.*, 40 NLRB 1333 (1942).

**Voting Group:**

All full-time and regular part-time nuclear supervising operators (NSOs) employed by the Employer at its Fermi II facility located at 6400 North Dixie Highway, Newport, Michigan; but excluding all office clerical employees, managerial employees, professional employees, and guards and supervisors as defined in the Act, and all other employees.

If a majority of valid votes is cast for Intervenor/Cross-Petitioner, it will be taken to have indicated the employees' desire to be included in the existing Fermi II Power Plant unit currently represented by Intervenor/Cross-Petitioner. If a majority of the valid ballots is not cast for representation, it will have indicated the employees' desire to remain unrepresented.

Those eligible shall vote as set forth immediately above. Also see the attached Direction of Election.

Dated at Detroit, Michigan, this 30th day of May 2006.

(SEAL)

"/s/[Stephen M. Glasser]."

/s/ Stephen M. Glasser

Stephen M. Glasser, Regional Director  
National Labor Relations Board – Region 7  
Patrick V. McNamara Federal Building  
477 Michigan Avenue – Room 300  
Detroit, Michigan 48226

## DIRECTION OF ELECTION

An election by secret ballot shall be conducted under the direction and supervision of this office among the employees in the unit(s) found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those employees in the unit(s) who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such a strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Employees who are otherwise eligible but who are in the military service of the United States may vote if they appear in person at the polls. Ineligible to vote are 1) employees who quit or are discharged for cause after the designated payroll period for eligibility, 2) employees engaged in a strike, who have quit or been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and 3) employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by:

### LOCAL 223, UTILITY WORKERS OF AMERICA (UWUA), AFL-CIO

#### LIST OF VOTERS

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969); *North Macon Health Care Facility*, 315 NLRB 359 (1994). Accordingly, it is hereby directed that **within 7 days** of the date of this Decision, **2** copies of an election eligibility list, containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned who shall make the list available to all parties to the election. The list must be of sufficient clarity to be clearly legible. The list may be submitted by facsimile transmission, in which case only one copy need be submitted. In order to be timely filed, such list must be received in the **DETROIT REGIONAL OFFICE** on or before **June 6, 2006**. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

## **RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the **Executive Secretary, Franklin Court, 1099 14th Street N.W., Washington D.C. 20570**. This request must be received by the Board in Washington by **June 13, 2006**.

## **POSTING OF ELECTION NOTICES**

a. Employers shall post copies of the Board's official Notice of Election in conspicuous places at least 3 full working days prior to 12:01 a.m. of the day of the election. In elections involving mail ballots, the election shall be deemed to have commenced the day the ballots are deposited by the Regional Office in the mail. In all cases, the notices shall remain posted until the end of the election.

b. The term "working day" shall mean an entire 24-hour period excluding Saturday, Sundays, and holidays.

c. A party shall be estopped from objecting to nonposting of notices if it is responsible for the nonposting. An employer shall be conclusively deemed to have received copies of the election notice for posting unless it notifies the Regional Office at least 5 days prior to the commencement of the election that it has not received copies of the election notice. \*/

d. Failure to post the election notices as required herein shall be grounds for setting aside the election whenever proper and timely objections are filed under the provisions of Section 102.69(a).

\*/ Section 103.20 (c) of the Board's Rules is interpreted as requiring an employer to notify the Regional Office at least 5 full working days prior to 12:01 a.m. of the day of the election that it has not received copies of the election notice.